IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2073 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL SATISHCHNADRA AMRUTLAL

Versus

STATE OF GUJARAT DFFASFASDFSDA

Appearance:
MR SUNIL K SHAH for Petitioner
Mr.P.K.Shukla, learned A.G.P. for respondent No.1.
No one has appeared on behalf of respondent No.2
despite service of the rule.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 05/05/2000

ORAL JUDGEMENT

1. This Special Civil Application is directed against the order dt.14.3.2000 passed by the Addl.Development Commissioner, Government of Gujarat in Appeal under S.57(3) of the Gujarat Panchayats Act, 1993 (hereinafter referred to as 'the Act') read with the

order dt.23.12.99 passed by the District Development Officer, District Panchayat, Mehsana whereby the petitioner was removed from the office of the Sarpanch under S.57(1) of the Act.

2. Petitioner has come with the case that he was elected as a Sarpanch of Gram Panchayat, Shobhasan, Taluka Vadnagar,District - Mehsana. He was subjected to a notice dt.11.10.99 by the District Development Officer of District Panchayat, Mehsana. In this show cause notice in all nine charges were levelled against the petitioner. The petitioner filed a detailed reply dt.20.10.99 to all these charges denying the same and pointing out that there was no material against the petitioner for the purpose of his removal from the office of the Sarpanch.The District Development Officer, however, passed an order on 23.12.99 removing the petitioner from the office of Sarpanch. The petitioner preferred appeal against the aforesaid order dt.23.12.99 under S.57(3) of the Act before the Addl.Development Commissioner. The appellate authority has rejected the Appeal and passed the order dt.14.3.2000.

3. The learned counsel for the petitioner has submitted that so far as charge No.1 is concerned, there is no question of his involvement in the auction of the land as the auction was held by the Deputy Taluka Development Officer and he is not at all concerned with this allegation. Moreover, it has been pointed out that in this very matter, some suits have been filed by a group of persons. It has also been submitted that out of 31 persons, who participated in the auction, 26 persons have filed their affidavits saying that the auction was held according to rules. One person had given affidavit on both the sides and 4 persons have stated that the auction was not held. In any case, I find that in this regard, the District Development Officer himself after considering the petitioner's reply, has observed that since the matters were pending in the Court, he does not express any opinion and this finding has already been upheld by the appellate authority. Thus, so far as the charge No.1 is concerned, it is established on record that either way there is no finding on this aspect of the mater and, therefore, it could not be used against the petitioner for the purpose of his removal in absence of any finding either way.

4. So far as charge No.2 that 11000 K.V.line had not been removed before making the allotment of plot through which these lines were passing is concerned, the petitioner has explained that the persons, to whom the

lands were allotted, had been categorically put to notice that they would not raise any construction till the lines are removed. He has submitted that despite this if the villagers raised construction, he cannot be held responsible for the violation of the condition on their part. It has also been submitted that it was a land of Panchayat and the petitioner had only acted as per the Resolutions of the Panchayat and there is no question of any misuse of money. The lines are to be removed ultimately and for that purpose if any expenses have been incurred by the Government for the purpose of shifting the line, the petitioner cannot be held responsible for the same. On this aspect of the matter,I find that there was no material whatsoever before the District Development Officer to form an opinion against the petitioner to take this charge as proved and there is no specific allegation that there was any misappropriation of money and, therefore, the finding on this aspect appears to be perverse.

5. So far as charges Nos.3 to 9 are concerned, they all related to the allegations of the petitioner's failure to remove the unauthorised encroachments. The petitioner's answer to these charges is that the notices had been given to the encroachers for removing the unauthorised encroachment. It has been further submitted that even if there is a failure to remove the unauthorised encroachment, it cannot be said to be a misconduct on the part of the petitioner so as to invoke the provisions of S.57(1) of the Act.

6. Learned A.G.P. has submitted that the order has been passed by the District Development Officer after considering the reply as has been filed by the petitioner and the Addl. Development Commissioner has also passed a reasoned order after considering the submissions made by the petitioner and the arguments which were raised by him and the orders do not suffer from any infirmity.

7. Having considered the submissions made on behalf of both the sides, I find that in the facts of this case, there is nothing which turns out against the petitioner in respect of charge No.1 as there was no definite finding either way by the District Development Officer or by the Addl. Development Commissioner. The finding on charge no.2 is wholly perverse and the same has been mechanically upheld by the Addl. Development Commissioner.So far as charges Nos.3 to 9 are concerned, which relate to the failure on the part of the petitioner to remove unauthorised encroachment, it may straightaway be observed that such allegations may at the most speak

of inefficiency, but certainly they do not constitute any misconduct on the part of the petitioner. There are large number of unauthorised encroachments even on the lands which belong to the Government and if the Government functionaries are not able to remove the encroachment for various reasons, including the law and order problems or for other alike reasons, it cannot be said that such functionaries have misconducted themselves. In any case, a difference has to be made between inefficiency and misconduct. I find that it is a case in which there was no material which can be said to be relevant and germane to the grounds of misconduct as mentioned in S.57(1) of the Act and the petitioner, who was an elected representative of the Panchayat functioning as a Sarpanch, has been removed for reasons which are not at all germane to the grounds mentioned in S.57(1) and there was no material to form an opinion against the petitioner with regard to any of the charges for which he was subjected to the show cause notice and for which the impugned orders have been passed. It appears that the authorities charged with the power under S.57 for the purpose of removing and for considering the appeal against the order of removal have not addressed themselves to the requirements and have misconstrued the case of the petitioner to be a case of misconduct whereas in fact at the most it could be said to be a case of inefficiency on the part of the petitioner if the unauthorised encroachments have not been removed. The task of removing unauthorised encroachment is a general problem which is faced by various local bodies, including Municipal Corporations and the Government itself even when it is armed with court orders and for reasons beyond the control of the concerned functionaries,many times it becomes impossible to remove such unauthorised encroachment without use of force and therefore, in the opinion of this court such a failure, which at the most reflect the level of efficiency, cannot be treated as misconduct or a persistent default in performance for the purpose of removing an elected office bearer. If on such grounds elected representatives are removed from their offices, as if they are Government servants, it would militate against the basic principles of democratic set up and the democratic institutions at the local self Government and it would amount to a direct interference with the functioning of the local bodies contrary to the provisions made by the Legislature. This Court while considering such matters is not sitting in Appeal over the orders passed by the authorities, but what is found in the facts of this case is that the orders have been passed against the petitioner for reasons which are wholly extraneous and not at all germane to the grounds

which are mentioned in S.57(1) for the purpose of removal of an elected office bearer like Sarpanch and it is a case of total absence of any material on the basis of which the opinion could be formed against the petitioner for the purpose of holding the charges to be proved--rather the charges have no nexus to the grounds mentioned in Sec.57(1).

7. For the reasons, aforesaid, the impugned order dt.23.12.99 passed by the District Development Officer and the order dt.14.3.2000 passed by the Addl. Development Commissioner cannot be sustained in the eye of law. Both these orders are, therefore, quashed and set aside. Accordingly the petitioner stands relegated to the position of an elected Sarpanch of the Gram Panchayat, Shobhasan Gram Panchayat as he was functioning prior to the passing of the impugned orders. This Special Civil Application is accordingly allowed. The rule is made absolute with no order as to costs. Direct service is permitted.

(M.R.Calla,J)